

UNITED STATES DISTRICT COURT
for the
WESTERN DISTRICT OF OKLAHOMA

LONA M. VARNER and)
LONNIE D. TINSLEY,)
)
Plaintiffs,)
)
Vs.)
)
CITY OF EL RENO, OKLAHOMA,)
THOMAS DURAN, FRANK TINGA,)
JOSEPH SANDBERG, police officers,)
and JOHN DOES NOS. 1 - 10,)
)
Defendants.)

Case No. CIV-2010-

COMPLAINT

First Cause of Action

Introduction

The plaintiffs, Lona M. Varner and Lonnie D. Tinsley, for their complaint allege and state:

1. This action is filed for money damages against the City of El Reno, Oklahoma, Thomas Duran, Frank Tinga, Joseph Sandberg, police officers and John Does Nos. 1 - 10, police officers and employees of the City of El Reno, for violations of the plaintiffs' constitutional rights. The plaintiffs alleges that the defendants caused the plaintiffs to be wrongfully seized, assaulted, battered, physically harmed, humiliated emotionally harmed and, in Varner's case, cruelly injured with a Taser and imprisoned for several days without probable cause in a hospital.

2. This in an action at law brought for the benefit of the plaintiffs to redress the deprivation under color of statute, ordinance, regulation, custom or usage of rights, privileges or immunities secured to the plaintiff by the Fourth and Fourteenth Amendments to the Constitution of the United States, and also arising out the law, statutes and Constitution of the State of Oklahoma,

and more particularly set out hereinafter.

Jurisdiction

3. This action is brought pursuant to Title 42 of the United States Code, Sections 1983 and 1988 and the Fourth and Fourteenth Amendments to the Constitution of the United States. Jurisdiction is founded upon Title 28 of the United States Code, Sections 1331, 1343(a)(3), and 1391(b) and the above-mentioned statutory and constitutional provisions. Plaintiffs further invoke pendent jurisdiction of this Court to consider the claims arising under State law, this being an action wherein the State and Federal claims derive from a common nucleus of operational facts, and are such that the plaintiffs would normally be expected to try them all in a single judicial proceeding.

4. This action for damages is also authorized by laws of the state of Oklahoma, in particular 76 O.S. § 6, as well as the common law of Oklahoma.

5. Plaintiffs have presented a timely claim to the City of El Reno as provided in 51 O.S. §156, but said claim has neither been paid nor has payment thereon been refused. Further, all conditions precedent have been fulfilled to the bringing of this action.

6. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.

Parties

7. Plaintiffs, Lona M. Varner, 86 years-old, and her grandson, Lonnie D. Tinsley, are citizens of the United States and the State of Oklahoma and County of Canadian.

8. During all times mentioned herein, the defendants, Thomas Duran, Frank Tinga, Joseph Sandberg, police officers, and John Does Nos. 1 - 10, were residents within the Western District of Oklahoma and were duly employed by the City of El Reno as policemen through the El Reno Police Department within Canadian County, State of Oklahoma.

9. Plaintiffs allege that at all times hereinafter mentioned the defendants John Does Nos. 1 - 10 were acting for and on behalf of the City of El Reno, in their official capacities as police officers.

10. At all times hereinafter mentioned the defendant City of El Reno was and still is a municipal corporation, organized and existing under and by virtue of the laws of the State of Oklahoma, and may be served with summons by serving the Municipal Clerk, or otherwise, pursuant to 11 O.S.2007 §22-103.

11. At all times hereinafter mentioned the defendant City of El Reno, by and through the El Reno Police Department, hired and employed the defendants Thomas Duran, Frank Tinga, Joseph Sandberg, police officers, and John Does Nos. 1 - 10 to act as police officers for the City and at all times condoned the acts and actions of the individual defendants, or having recognized the acts of the individual defendants were contrary to its policies and guidelines took no action.

Factual Allegations

12. On or about December 22, 2009 the plaintiff Lona M. Varner was in her apartment at 1955 S. Shepard Ave, Apt. 703, El Reno, Oklahoma, in her hospital-type bed. She was also connected to a portable oxygen concentrator with a long hose.

13. A severe winter storm was moving into the area and Ms. Varner's grandson, Lonnie D. Tinsley, came to the apartment to check on her at the request of his father, now deceased; because Lona Varner is 86 years-old and in marginal health, she takes several prescribed medications daily; Lonnie's grandmother was unable to tell him exactly when she had taken her meds, he was concerned and called 911 to ask for an emergency medical technician to come to her apartment to evaluate her.

14. As many as ten El Reno police, John Does Nos. 1 - 10, including Thomas Duran,

Frank Tinga, and Joseph Sandberg, came to the apartment and pushed their way through the door. Ms. Varner told them to get out of her apartment. Instead, the apparent leader of the police (Duran) instructed another policeman to “Taser her!” He stated in his report that the 86 year-old plaintiff “took a more aggressive posture in her bed,” and that he was fearful for his safety and the safety of others.

15. Lonnie Tinsley told them, “Don’t taze my Granny!” to which they responded that they would taser him; instead, they pulled him out of her apartment, took him down to the floor, handcuffed him and placed him in the back of a police car.

16. The police then proceeded to approach Ms. Varner in her bed and stepped on her oxygen hose until she began to suffer oxygen deprivation.

17. The police then fired a taser at her and only one wire struck her, in the left arm; the police then fired a second taser, striking her to the right and left of the midline of her upper chest and applied high voltage, causing burns to her chest, extreme pain and to pass out.

18. The police then grabbed Ms. Varner by her forearms and jerked hands together, causing her soft flesh to tear and bleed on her bed; they then handcuffed her.

19. The police freed Lonnie Tinsley from his incarceration in the back of the police car and permitted him to accompany the ambulance with his grandmother.

20. Lona Varner was transported by paramedics to Parkland Hospital in El Reno where the burns to her chest and the torn flesh on her arms were treated.

21. Ms. Varner was transported in the early morning hours of December 23, 2009 from Parkland to St. Anthony’s Hospital in Oklahoma City where she was placed in the psychiatric ward at the direction of the El Reno police; she was held there for six days and released.

22. As a result of the wrongful arrest and detention, the plaintiff Lona M. Varner suffered

the unlawful restraint of her freedom, bodily injury, assault, battery, the trashing of her apartment, humiliation, loss of personal dignity, infliction of emotional distress and medical bills.

23. As a result of the wrongful arrest and detention, Lonnie D. Tinsley suffered the unlawful restraint of his freedom, assault, battery, humiliation, lost of person dignity, negligent infliction of emotional distress by witnessing the physical abuse of his grandmother and intentional infliction of emotional distress.

24. By the actions described above, the defendants deprived the plaintiffs of clearly established and well-settled constitutional rights:

- a. Freedom from the deprivation of liberty without due process of law;
- b. Freedom from the seizure of theirs persons without due process of the law.

25. The individual defendants subjected the plaintiffs to these deprivations of their rights either maliciously, or by acting with a reckless disregard for whether the plaintiffs' rights would be violated by their actions.

26. As a direct and proximate result of the acts and omissions of the individual defendants, which were intentional, or done with gross negligence, Lona M. Varner and Lonnie D. Tinsley were forced to endure great pain, mental suffering, fear and humiliation, were deprived of their physical liberty, were forced to incur legal and medical expenses, and suffered personal injury and mental injuries as described above.

Second Cause of Action

27. Paragraphs 1-26 are incorporated herein by reference and are made paragraph 27.

28. In addition to the Civil Rights violations previously alleged, the plaintiffs assert that the defendants John Does Nos. 1 - 10 acted to cause the false arrest and imprisonment, negligent and intentional infliction of emotional distress, and destruction of property at Ms. Varner's apartment,

all contrary to the common laws of the state of Oklahoma. The defendant City of El Reno is liable for the acts of its policemen, for which a claim has been filed with the Clerk of the City of El Reno, and said claim has been neither paid nor refused, although the plaintiff reasonable expects that the defendant City of El Reno will unjustifiably deny the claim, or will not act on the claim within ninety days after its filing, after which the claim will be deemed denied by the laws of this state.

Third Cause of Action

29. Paragraphs 1-28 are incorporated herein by reference and are made paragraph 29.

30. Defendant City of El Reno, as a matter of policy and practice, has with deliberate indifference failed to adequately discipline, train or otherwise direct police officers concerning the rights of citizens, thereby causing the defendant police officers to engage in the unlawful conduct described above.

31. Defendant City of El Reno, as a matter of policy and practice, has with deliberate indifference failed to properly sanction or discipline police officers, including the defendants in this case for violations of the constitutional rights of citizens, thereby causing police, including the defendants in this case, to engage in unlawful conduct.

32. As a result of this deliberate indifference of the El Reno Police Department, plaintiffs suffered the damages as aforesaid.

Prayer for Relief

WHEREFORE, plaintiffs request this court:

- a. Assume jurisdiction over plaintiffs' causes of action;
- b. Award compensatory damages against each of the individual defendants;
- c. Award punitive damages against each of the individual defendants;
- d. Award compensatory damages against the defendant City of El Reno on the pendent

claims;

- e. Award costs of this action including attorneys' fees to the plaintiffs; and,
- f. Award such other and further relief as this court may deem appropriate.

Respectfully submitted,

/s/ Brian M. Dell

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JURY TRIAL DEMANDED
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